



DECEMBER 2008 ... VOL 3 ... PART 1

## EMPLOYMENT TEAM NEWSLETTER

November was another busy month for the Employment Team at Hardwicke Building as the downturn in the economy made itself felt. In this edition of our newsletter we consider the bountiful source of dispute that is the Office Christmas Party and also examine two recent decisions that should be useful to you all. If you have any suggestions or ideas for our coming editions please contact Louise Poppelwell, Marketing Manager at Hardwicke Building on [louise.poppelwell@hardwicke.co.uk](mailto:louise.poppelwell@hardwicke.co.uk) or phone Louise on 020 7242 2523.

### Mostly this month .....

- Employment Team members in November were increasingly instructed to advise on redundancy, severance agreements and compromise agreements. The nature of the work reflects the economy as a whole and employers and employees want to know about the procedural and substantive aspects of redundancies.
- Employment Team member Sarah Malik is currently involved in advising a Local Authority in the Midlands in relation to the vexed ongoing issues of equal pay that are affecting Local Authorities and the NHS
- This month Sarah has also successfully negotiated a six figure sum settlement for a client who raised grievances of bullying and harassment against an internationally known bank
- We await judgment in a 10-day case that Sarah was instructed in, defending allegations of race discrimination and harassment against the Metropolitan Police who invoked a statutory defence against one of the officers whom Sarah represented. We hope to have details for our next issue
- PJ Kirby is currently involved in various injunction hearings concerning alleged employee fraud and the misappropriation of no less than £3m worth of wet fish!
- PJ is also advising on a professional negligence claim against a firm of solicitors in connection with TUPE advice given on the sale of a company

### The Christmas Party – beware the litigation hangover.

Tales of disastrous Office Christmas Parties always provide acres of newsprint in the barren January news period. So how can you ensure that it is not your firm whose name is being circulated on the viral email list under “have you seen this?!”

First, look at the attendance list. Is there anyone who has not been invited? No-one might like John from Accounts (sorry, John), but if he’s feeling unloved and has not been given a pay rise this year, it may be the thing which drives him into the arms of a Tribunal.

Have you invited those on maternity leave? Have you informed those people who may be on long-term sick leave – it might just encourage them to believe they’ve not been forgotten.

You might be well advised to make sure everyone is aware that this is a work-related event. Whilst everyone should relax and let their hair down (even John), it should be made clear that behaviour towards other members of staff which would not be acceptable in the office, is equally unacceptable at the office bash.

The Christmas Party is fruitful ground for potential harassment claims as senior employees, their better judgement possibly slightly impaired, take it upon themselves to impress upon a new junior member of staff really how very attractive he/she is.

Without wishing to turn the Office Party into some kind of litigation minefield employers have even been held to be liable for what happens after the ‘official do’. The reveller in this report (which also made the Daily Telegraph) took a junior member of staff to a stripclub who promptly alleged harassment:

<http://www.traineesolicitor.co.uk/forums/legal-week/2838-shearman-sacks-associate-after-student-strip-club-complaint.html>

An employer cannot control their employee's private lives, but they can make it clear in advance of potential issues arising that conduct which may be perceived as harassing or discriminatory towards other employees – even outside the work context, will not be tolerated.

Finally, beware of the promises and half-promises of promotion, pay-rises and unspecified financial rewards which senior staff sometimes make (or hint at) to employees in a rather too literal interpretation of the giving spirit that is the Festive season.

There is a danger that the Christmas party may concentrate too much on the consumption of alcohol and most employment infractions at such events arise from over-indulgence of the Punchbowl. Some firms make the party a family affair which inevitably improves behaviour and reduces the alcohol intake.

Many attendees will not drink alcohol for reasons of health, religious belief or simply they are driving. It's possible to make it an alcohol-free event or to take care that there is a wide range of alcohol-free alternatives. Try to get away from the only alternative being warm orange juice and flat Coke.

On a purely practical note, at least one senior member of staff remaining alert and watchful at the Christmas Party may be a wise precaution. It's perhaps not much fun being the only sober one, but maybe John from Accounts will volunteer?

## Important recent decisions

---

The recent decision in *Neweida v BA Plc* (27.11.08) CA ruled against the wearer of a cross who claimed indirect discrimination by the operation of BA's uniform policy. The decision was widely reported but the decision gave rise to a number of lesser reported findings. The aggrieved's religious belief need not be an established religion, nor even one shared by others. Disadvantage could arise not only from accepted practice of a religious belief, but also the way in which that religious belief was practised and interpreted by the individual. The CA determined that a belief that wearing of jewellery should be permitted - which happened to have religious connotations (a cross, in this case) - was not limited to those who practised a religion or held beliefs. The claimant lost primarily because the CA determined that indirect discrimination required group disadvantage, not merely another person who shared a similar mindset or belief.

In *Sheffield ForgeMasters International Ltd and Fox (and ors)* EAT 7.11.08 the receipt of disability benefit did not prevent the claimants recovering compensation for loss of earnings during the same period, because the relevant regulations entitled a person who was fit to work to be in receipt of disability benefit in certain defined circumstances. Eligibility for or receipt of incapacity benefit did not mean that an individual was incapable of working or could not obtain paid work. It therefore did not disentitle him from receiving compensation for loss of earnings during that period, although he would receive no more than the benefit or the lost earnings, whichever was greater. The case report is here:

[www.employmentappeals.gov.uk/Public/Upload/08\\_014308\\_0164rjfhLBMAA.doc](http://www.employmentappeals.gov.uk/Public/Upload/08_014308_0164rjfhLBMAA.doc)

## Increase in employment payments and awards

---

You will be aware that from 1st February 2009, under the Employment Rights (Increase of Limits) Order 2008 SI 2008/3055 the limits applicable to certain tribunal awards will increase.

- a week's pay for the purposes of calculating a statutory redundancy payment and the basic and additional award for unfair dismissal rises to £350.
- the compensatory award limited for unfair dismissal rises to £66,200
- for the new awards to apply the EDT must be on or after 1st February 2009, or
- the event giving rise to the entitlement occurs on or after 1st February

The relevant order can be found at: [www.opsi.gov.uk/si/si2008/uksi\\_20083055\\_en\\_2](http://www.opsi.gov.uk/si/si2008/uksi_20083055_en_2)

## Upcoming Seminars

Members of the Employment team have very recently given a half-day seminar to HR professionals covering key aspects of their practical role as the front line in many employment issues.

We are continuing our seminar program for employment professionals with seminars for Chartered Institute of Personnel and Development (CIPD). We can offer tailor-made and in-house CPD accredited seminars on particular employment topics important to you and your colleagues. Please do not hesitate to contact Louise Poppelwell on 020 7242 2523 or email [louise.poppelwell@hardwicke.co.uk](mailto:louise.poppelwell@hardwicke.co.uk) for further information.

This newsletter was edited by Colm Nugent. For further information on the Hardwicke Employment Law Team and the services we offer, please visit our website at [www.hardwickebuilding.co.uk](http://www.hardwickebuilding.co.uk)

The members of Hardwicke's Employment Team have specialised skills and experience in all aspects of employment law including matters such as discrimination, unfair dismissal and redundancy, restrictive covenants as well as non-contentious work. We represent both employers and employees via conventional means in addition to direct access.

**Telephone:** 020 7242 2523

**Email:** [clerks@hardwicke.co.uk](mailto:clerks@hardwicke.co.uk)

**Web:** [www.hardwickebuilding.co.uk](http://www.hardwickebuilding.co.uk)

**Clerks:** Danny O'Brien & Daniel Kemp

Nigel Jones QC	1976 (1999)	David Lewis	1997
Stephen Lennard	1976	Zeeshan Dhar	1999
Barbara Hewson	1985	Sarah Malik	1999
PJ Kirby	1989	David Lawson	2000
Colm Nugent	1992	Denis Edwards	2002
Christopher Camp	1996	Morayo Fagborun-Bennett	2004

[www.hardwicke.co.uk](http://www.hardwicke.co.uk)

Hardwicke Building New Square Lincoln's Inn London WC2A 3SB  
Telephone 020 7242 2523 Fax 020 7691 1234 DX LDE 393